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CURRENT TOPICS

Judicial Interruptions

BOTH parties complained in *Jones* v. *National Coal Board* (*The Times*, 25th March) that "the nature and extent of the judge's interruptions" made it impossible for counsel to put his case adequately or to cross-examine the witnesses adequately or effectively. The Court of Appeal found that the judge, actuated by the best motives and notwithstanding his acute perception and acknowledged learning, had interrupted so much that neither party was able properly to put his case. The court ordered a new trial, as it did on the same day and on a similar ground in respect of the same judge in *Bunting* v. *Thorne Rural District Council*. Of him the court said: "His mind and his speech were so much at one that, as soon as a thought came to him, it at once found voice." Both cases are likely to be quoted again, and not only in the Court of Appeal, for their exposition of the respective functions of counsel and judge. In this country, the court said, the judge sits to hear and determine the issues, not to conduct an investigation on behalf of society at large, as happens in some foreign countries. To illustrate this, the court pointed out that a judge was not allowed to call a witness in a civil dispute. It was for counsel to examine witnesses, and to state his case as fairly and strongly as he could, without undue interruption, "lest the sequence of his argument be lost." On the other hand, the judge could intervene to clear up a point, to see that the advocates behaved themselves seemly and kept to the rules of law, and to exclude irrelevancies and discourage repetition.

Cross-Examination and the Bench

NOT the least interesting of the observations in the judgment of the Court of Appeal in *Jones* v. *National Coal Board* were those relating to cross-examination. Interventions by the judge, the court held, should be as infrequent as possible when a witness is under cross-examination. Cross-examination, the judgment continued, loses much of its effectiveness in counsel's hands if the witness is given time to think out the answer to awkward questions; the very gist of cross-examination lies in the unbroken sequence of question and answer. Further, the court held, cross-examining counsel is at a grave disadvantage if he is prevented from following a pre-conceived line of inquiry most likely to elicit admissions or qualifications of evidence given in chief. Excessive judicial interruptions inevitably weaken the effectiveness of cross-examination on both those aspects. An example of the

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disadvantage to which counsel can be subjected in following his line of inquiry occurred in *Bunting* v. *Thorne Rural District Council*, when the judge said to the witness who was being cross-examined: " Be careful, or you will find yourself in a trap," and also " You are walking straight into the trap." Such observations stultify and frustrate counsel in the exercise of their public duties, and thereby diminish the effectiveness of our system of justice.

Rights to Light: Committee Appointed

As long ago as 1948 this Journal drew attention (92 SOL. J. 121) to the difficulties of an owner of land, which he was unable to develop owing to war-time and post-war restrictions, in preventing the acquisition of a right to light by neighbouring properties by virtue of the Prescription Act, 1832, s. 3. Only three months ago we again returned to the subject, pointing out that in a few years' time the period of twenty years prescribed by s. 3 will have expired since the occurrence of extensive war damage, much of which has not yet been made good (*ante*, p. 53). We were unable to suggest any solution to the landowner's dilemma which would be practicable and efficacious in all circumstances, and so we warmly welcome the LORD CHANCELLOR'S decision to appoint a committee under the chairmanship of Mr. Justice HARMAN to study the matter. The committee's terms of reference will be to advise the Lord Chancellor whether legislation is desirable (1) to amend the law relating to rights of light in relation to war-damaged sites or sites whose development was prevented or impeded by reason of restrictions or controls imposed during or after the late war; and (2) to preserve rights of light acquired or in process of acquisition by buildings which subsequently suffered war damage. The other members of the committee are Mr. GUY BISCOE, F.R.I.C.S., Mr. P. V. BURNETT, F.R.I.B.A., Mr. J. CATLOW, Mr. J. C. CRAIG, A.R.I.C.S., Mr. A. T. DRIVER and Mr. G. H. NEWSOM, Q.C. The secretary of the committee is Mr. K. M. NEWMAN, to whom communications may be addressed at the Lord Chancellor's Office, House of Lords.

Not the Last Word

" FINAL " is an adjective which might be thought to be a lot less ambiguous than some others. But two recent decisions show that even a word of such a definite colour as this must be viewed against the background of its context. The first case dealt with an order striking out a statement of claim. Such an order, as Buckley, L.J., pointed out in *Re Page* [1908] 1 Ch. 489, may bring the action altogether to an end, and from this point of view it would be reasonable to say that it is a final order. Nevertheless, the course of practice has for long been to regard an order of this kind, whether made because the pleading disclosed no cause of action or because it was frivolous or vexatious, as an interlocutory order, for the purposes of determining the time allowed for an appeal from it and whether leave is required for such an appeal. In applying this practice in *Hunt* v. *Allied Bakeries, Ltd.* [1956] 1 W.L.R. 1326, the Court of Appeal mentioned some other grounds for dismissal of an action where the resulting order had been treated as interlocutory. It is a paradox founded on notoriety and convenience. The other instance of a special interpretation being applied to the word " final " may be said to spring from a principle affecting the vested jurisdiction of the courts. " The remedy by certiorari," said DENNING, L.J., in *R.* v. *Medical Appeal Tribunal*; *ex parte Gilmore* [1957] 2 W.L.R. 498; *ante*, p. 248, " is never to be taken away by any statute except by the most clear and explicit words." Thus the provision in s. 36 (3) of the National Insurance (Industrial Injuries) Act, 1946, that except as provided a decision of a medical appeal tribunal shall be final, was not sufficient to oust the important and well-established jurisdiction of the courts to review such decisions for excess of jurisdiction, or for error of law apparent on the face of the record.

Fixed Prices

UNLIKELY as it is that the precise point reported in *County Laboratories, Ltd.* v. *J. Mindel, Ltd.* [1957] 2 W.L.R. 541; *ante*, p. 286, will recur, the judgment of HARMAN, J., on a matter arising under the Restrictive Trade Practices Act, 1956, is bound to draw the attention of practitioners concerned in this new field of law. His lordship remarked on the novelty of s. 25 of the Act, which seeks to reverse the law as it stood before the Act to the extent of making restrictive conditions run with chattels. The section provides that, where goods are sold by a supplier subject to a condition as to the price at which those goods may be resold, that condition may be enforced by the supplier against any person, though not a party to the sale, who subsequently acquires the goods with notice of the condition. Harman, J., thought that " notice " here meant express knowledge and not the kind of constructive notice which suffices in the case of covenants affecting land under the doctrine of *Tulk* v. *Moxhay*. Accordingly, construing, as he said, a section limiting the freedom of trade, the learned judge refused a supplier's motion for an interlocutory injunction, since it was not shown that the defendant retailers knew that the goods in question were subject to the price condition on which the plaintiffs relied. Subsequently the action was settled on agreed terms (*The Times*, 27th March).

The Law and Obscenity

THOSE who think that the word " obscene " is out of date, and that ours is a generation of the pure to whom all things are pure, would do well to consider the facts given by Mr. J. E. S. SIMON, Q.C., Under-Secretary to the Home Office, on the Second Reading of the Obscenity Bill on 29th March. Pornographic works, he said, were smuggled in packages made to look like bundles of newspapers, from which the centre had been cut out. Some came in with false book covers. None had the smallest literary value, but they would sell at prices up to £7 apiece. Last year forty-two people were convicted of publishing obscene libels in England and Wales. They were dealt with either by fines, amounting in all to about £1,700, or by imprisonment, which in that year ranged from two months to one year. There were thirty-eight destruction orders involving in all about 22,500 postcards, over 3,000 photographs, 1,044 books (all paper-backed), 966 magazines and 42 spools of film. Although the Government took the view that it would be impossible to satisfy a jury that the dominant effect of a publication was to corrupt and deprave persons among whom it was intended to circulate, as provided in the Bill, if the House gave it a Second Reading the Government would give what help they could towards making it workable. It was read a second time and committed to a select committee.

E.C.T.

ELECTROCONVULSIVE therapy, or E.C.T., has recently been brought into legal prominence: in the recent case of *Bolam* v. *Friern Hospital Management Committee* (*The Times*, 21st February *et seq.*), after hearing much expert evidence, a jury dismissed an action for damages by a plaintiff who had been seriously injured while receiving this treatment in the defendants' hospital. Since such physical, as opposed to analytical, methods of treatment are being used increasingly, it may be of value to examine more closely these dramatic and potentially dangerous weapons which science has put into the hands of the psychiatrist. The lawyer can only decide whether or not a doctor has been negligent in using a particular method if he understands the application of the method, the alternatives available, and the problems which face the doctor in taking a decision to apply the treatment.

One of the commonest of psychoneuroses is the anxiety state, and it is for this condition that the various " shock " treatments are particularly valuable. They are also used in the treatment of schizophrenia in young patients, but much less effectively. An anxiety state manifests itself by both mental and physical disturbance: anxieties which are in themselves normal and healthy mental processes get out of hand to such an extent that they cause physical symptoms such as sweating, palpitations, indigestion, loss of appetite and headaches, as well as nervous symptoms such as lack of concentration, sleeplessness and loss of memory. The immediate cause of this state is the tension produced in the mind by two or more conflicting emotional tendencies—conscience and desire, for example, or duty and inclination—but the ultimate origin of this mental conflict is often lost in the shadowy cloudland of childhood memories. The obvious treatment would seem to be one which would resolve the conflict, but this is made difficult and often impossible because the warring tendencies must first be recognised and the mind puts up the most elaborate defences to prevent their identification. Psychoanalysis may, after long and laborious hours, lay bare the battlefield and the contesting emotions, and in so doing go a long way to effecting a cure: after this, it is often possible to persuade the patient into a state of mental health by pointing to the cause of his disorder. But great skill and much time are needed for psychoanalysis, and the expense of both is often prohibitive, so that a short cut is very desirable. For centuries various methods have been used from time to time which were found to produce some improvement, apparently by the sheer violence of their impact on the brain, but it was not until the nineteen-thirties that any systematic method of " shock " treatment was evolved.

The " shock " methods—E.C.T. and insulin—together with the surgical operation known as leucotomy, are the short cuts in use to-day. Insulin and leucotomy cannot be regarded as alternatives to E.C.T. Insulin is not as certain in its results and it can be dangerous; it is used mainly where E.C.T. has failed, and in cases of schizophrenia. Since leucotomy involves opening the skull, and the resulting change in personality is less predictable, it is generally reserved for cases of developed psychosis, as opposed to neurosis. The *rationale* of all three methods is to break up in some way the nervous pathways in the brain which carry the impulses producing the pattern of conflict. In leucotomy the surgeon's knife cuts the pathways leading from the frontal lobes—the seat of the emotions—to the " lower centres," which are concerned with the animal, and mainly unconscious, functions of the body. By the insulin method a coma is induced which presumably acts by altering the chemical environment of the brain-cells to such an extent that the pattern is dispersed, and does not re-form on the return of consciousness. In E.C.T. a small electric current, at somewhere around 100 volts, is passed between two electrodes placed one on each side of the front of the skull. A convulsive fit of great violence results, the patient remains unconscious for about ten minutes thereafter and afterwards does not remember anything since some minutes before the current was passed. The electric shock to the nerve-cells creates disorder among all the nervous patterns to such an extent that consciousness is lost; when the patterns re-form, the most recently acquired are least likely to take shape again, and the patient may be restored to the mental condition he was in before the psychoneurosis supervened. This must be regarded as an ideal simplification of the process: sometimes the personality is greatly changed, it may be for the worse.

Such a method is highly empirical; it is rather like giving a violent shake to a case of valuable china in order to destroy the pattern on a single displeasing teacup. But however appallingly unscientific it may seem, the treatment works in a large proportion of cases. The patient sleeps normally, gets back his powers of concentration and loses his physical symptoms, often after only a few treatments. Most surprisingly of all, his memory improves.

Reducing the risks

The risks of such treatment are obvious, yet it is considered safe enough to use on out-patients. Fractures which might result from contact with hard objects can be guarded against, but it is difficult to prevent fractures in a certain number of cases from the pull of muscles on bones during the convulsive twitchings of the fit. Thus the contraction of jaw muscles may be sufficient to fracture the jaw, or the head of the thigh bone may be driven with such force into the socket of the hip that the pelvis is fractured. Spinal fractures are particularly common—they are said to occur in 4 per cent. of cases—due to the arching of the spine during the fit. Spinal fractures can be reduced by restraint, such as a spinal jacket or holding the patient down in such a way that the spine cannot arch, but this will not prevent all fractures. Spinal anæsthesia prevents fractures of the spine and lower limbs, but not of the arms or jaw, and it has risks of its own. A further complication of E.C.T. is a sudden rise in blood-pressure which may cause trouble in an elderly or ailing patient. The only way in which both fractures and a rise in blood-pressure can be certainly avoided is to give an injection of a muscle-relaxant drug such as curare with a preliminary intravenous anæsthetic to prevent the terrifying sensation of curarisation. With this treatment the violent convulsions are entirely absent. Unfortunately, such drugs are not free from danger: fatalities do occur, and many psychiatrists prefer a live patient with a fracture to a dead one with all his limbs intact.

The doctor's position

The doctor thus has to face the alternative risks of fractures and the administration of a dangerous drug. Provided that he " directs himself " correctly as to the risks involved, he cannot be held to be negligent because he chooses one rather than the other; nor, it appears, if he does not give the patient the choice of risks. He need not even warn the patient of the risk involved where it is slight, and he may,

indeed, lie to him, if by so doing he is furthering the best interests of his patient : see *Hatcher* v. *Black* (1954), *The Times*, 2nd July. It may be thought that few psychoneurotics would agree to undergo E.C.T. if they were given a full description of the procedure and its attendant risks. As McNair, J., pointed out to the jury in the case of *Bolam* v. *Friern Hospital Management Committee*, this method of treatment has conferred enormous benefits upon the unfortunate sufferers from mental disorders. A doctor must surely be justified in subjecting his patient to certain risks when there is a very good chance that the treatment will turn him from an emotional wreck, a burden to himself and his friends, into a happy and useful member of society. The doctor's case is strengthened when there is no alternative treatment known which will produce such certain and rapid results.

MARGARET PUXON.

Common Law Commentary

THE HAMMER ON THE ANVIL

THE doctrine of consideration will always be surrounded by controversy because it concerns itself with the delimitation of a border-line—the line between those promises which should be enforceable at law and those which are only morally binding. The doctrine as evolved in English law is not, however, the only manner in which the delimitation may be marked : we could base the distinction between the two types of promise by reference to intention to be legally bound, though that would beg the question whilst an objective test is applied, and the objective test seems the only practical one. Again, we might adopt the principle that all promises supported by some *justa causa* should be enforceable, but short of making all promises enforceable, we merely change the problems. A new régime might be found easier to work under, or it might prove more troublesome.

There are several forces at work endeavouring to melt down the doctrine of consideration, and a few with designs for forging something to take its place. For example, when we hear pronouncements to the effect that " an existing duty is sufficient consideration " can we not hear the hammer on the anvil ? Will not learned professors in a hundred years' time look back at these decisions and say that they began or continued the movement away from the old towards the new ?

Promise to perform existing duty

It has already been noted (*ante*, p. 155) that in *Williams* v. *Williams* [1957] 1 W.L.R. 148 ; *ante*, p. 108, Denning, L.J., said that a promise to perform an existing duty is sufficient consideration. This is a complete contradiction of the constantly quoted case of *Stilk* v. *Myrick* (1809), 2 Camp. 317, where seamen, having promised to serve on board a ship, repeated that promise during the voyage after some of their number had deserted, and extracted a promise of increased remuneration giving, as consideration therefor, the promise to perform their existing duty. It was held insufficient.

So, also, in *Collins* v. *Godefroy* (1831), 1 B. & Ad. 950, it was held that a promise to pay expenses at a certain rate made to a witness in an action who had already been subpœnaed was not valid for want of consideration because it was the promise to perform an existing duty.

Again, in *Glasbrook Bros., Ltd.* v. *Glamorgan C.C.* [1925] A.C. 270, there are *dicta* to the same effect where a policeman is promised something for doing nothing more than his official duty.

The famous case of *Foakes* v. *Beer* (1884), 9 App. Cas. 605, proceeds on much the same principle.

Since the decision being examined is a Court of Appeal decision in which three judgments were given, it is of interest to see on what principle the other learned lords justices proceeded. The facts were, briefly, that a wife who had deserted her husband promised to maintain herself and not to pledge his credit nor to take matrimonial proceedings against him, in consideration of a payment of 30s. per week. The first of these promises would appear to be valueless since a wife who is at fault, by deserting her husband, has no right to pledge his credit ; and the second promise is void as contrary to public policy (*Bennett* v. *Bennett* [1952] 1 K.B. 249). The other lords justices based their decisions on the proposition that a deserting wife has the power to offer to return and the husband's liability to maintain her would revive. Hence there was good consideration to meet that contingency. Therefore the throwing overboard of one of the rules of consideration, as it has been known, was not found necessary by them. Indeed, Denning, L.J., also found grounds for satisfaction of the doctrine, so that his lordship's view on existing duty was a *dictum* : it was not a heavy blow but its influence should not be underestimated.

Affirmations made during negotiations

An analogous excursion into a possible new principle of contract was taken by Denning, L.J., in *Oscar Chess, Ltd.* v. *Williams* [1957] 1 W.L.R. 370 ; *ante*, p. 186, though this one is much more respectable in that it finds some support in old cases. The problem arises out of the negotiations for a contract : shall we treat as part of the terms of the contract the various utterances of the parties, or are they to be regarded as merely representations at most (they may be less—they may be honest expressions of opinion or intention, or mere laudatory commendation) ? If a statement is made in the course of negotiations and is not repeated at the time of the final decision whereby the contract is made, how can it be a promise in itself since there will be difficulty in finding any consideration in support, unless it be carried over and regarded as a term of the contract ?

It is asserted in this case that the term " warranty " has two meanings : (1) it may refer to " an affirmation at the time of the sale " and this is its " ordinary English meaning " ; (2) it may mean a term of the contract the breach of which gives a right to damages but not a right to treat the contract as at an end, thus distinguishing such a term from a more vital one (the latter being called a " condition ").

In criticising the growth of the use of this word in its second meaning during the last fifty years we must not overlook the development of a remedy for innocent misrepresentation, which, prior to about 1873, did not exist. To circumvent that omission there was the tendency in earlier times to treat as a warranty something which to-day would be regarded as an innocent misrepresentation : something said in the course of the negotiations to induce the other party to contract,

but not itself a term of the contract because it is uttered at a time before the contract has been got on its feet.

In the instant case the defendant, when agreeing to give, in exchange for a new car, a car which he already had, described it as a 1948 model. In fact it was a 1939 model, unknown either to himself or the plaintiff. Nor could the defendant be regarded as a person who would have particular knowledge of its year, since the registration book showed several changes, and, in fact, the defendant had had the car only a year. Hence, in saying that it was a 1948 model it would be reasonable to suppose that the defendant was expressing a belief only, based on the registration book.

The majority of the Court of Appeal took the view that this statement about the year of make was only an innocent misrepresentation. It is here that Denning, L.J., revives the notion of a binding promise in the form of a separate warranty which, he asserts, might have been made instead, had the facts pointed to it. The question whether such an affirmation during the course of the dealing is to be regarded as a warranty or as a mere representation depends on intention to be inferred from the totality of the evidence. If the sale is put into writing without including any reference to the representation that is some evidence that it was not meant as a warranty ; so, too, if one party is not an expert and cannot be supposed to have any special knowledge in the matter in question, that is evidence that the statement is a mere representation.

Used in this sense it seems that the " ordinary meaning " of the term " warranty " is something distinct from, or perhaps a special version of, the modern use of the term " condition " and the term " warranty " when the latter is used in contra-distinction to " condition " ; and it would further seem that this third shade of meaning is conveyed by the expression " fundamental." Thus, in his dissenting judgment, Morris, L.J., said that he thought the description of the car as a 1948 model was the foundation of the contract. True he later speaks of the term as a condition, but it is conceivable that fundamental terms are also conditions, i.e., that some conditions are fundamental and some are not. We are dealing with matters of degree when dealing with shades of meaning. The development of new terminology in this type of problem could clear the air. Here we seem to see old ideas being melted down with the new, and perhaps from the mixture we shall see new weapons forged.

L. W. M.

A Conveyancer's Diary

INHERITANCE ACT APPLICATIONS

THE invention of the originating summons is traditionally attributed to Lord Justice Fry. The name of the lord justice is not ordinarily included in the list of great law reformers, no doubt because there can be little popular comprehension of the nature of a reform which went wholly to matters of procedure, and procedure in suits in equity at that ; but the omission, if understandable, is unjust. In a vivid passage in his book of reminiscences, the late Augustine Birrell, who was called to the Bar a few years before the first of the Judicature Acts and thus commenced his practice before the unreformed High Court of Chancery, has described what happened under the old procedure if some doubt arose concerning the meaning of a phrase in a will and counsel advised the executor that it would not be safe to distribute without first obtaining a judicial construction of the passage in question. The whole elaborate and fabulously costly machinery of a suit for the administration of the estate by the court had to be started up. A bill was presented, inquiries to cover every possible eventuality should the doubt be upheld by the court were set on foot, and in the end, as often as not, the vice-chancellor or the Master of the Rolls brushed aside the doubt, the will took effect according to its apparent meaning, and all the inquiries were seen to have been held in vain. In vain, that is, for all purposes except that of making costs.

On this iniquitous system, which survived its parent the High Court of Chancery for some years, the procedure for the construction of written documents by originating summons was an enormous improvement. The amount which this procedure must have saved litigants in costs in the eighty years or so of its existence must now run literally into millions. And if this reform has never received the popular acclaim which it deserves, it has never lacked admirers among the initiated : there is a tendency to attribute to the procedure qualities which it does not possess, and to extend its area of operation, on the supposition that it possesses some mystical virtue which of itself can save costs in all cases in which the procedure is employed, to cases for which the procedure is in fact not suited. Illusions of this kind are more frequently nursed by those whose practice does not bring them regularly into contact with procedure by originating summons, than by those who practise in the Chancery Division and are thoroughly familiar with it.

It was doubtless under this impression, that an application by originating summons, whatever else it might do or not do, would always save costs as compared with an action started in the ordinary way by writ, that the rule-making committee made Ord. 54F of the Rules of the Supreme Court shortly after the Inheritance (Family Provision) Act, 1938, had become law. The most important rule in this Order is r. 1, which provides that an application to the High Court under s. 1 of the Act shall be made in the Chancery Division by originating summons (the county court has never had any jurisdiction to hear applications under the Act, whatever the size of the estate out of which maintenance is sought).

This provision was, I think, made without a proper appreciation of the difficulties in which it was bound to involve all parties to an application under the Act, except perhaps the personal representatives of the deceased, whose sole duty it is to put before the court all the relevant information which is available to them concerning the size and composition of the estate. The point for adjudication which is normally raised by an originating summons in the Chancery Division is a point of law—typically, a point of construction on a will or other written instrument, or on the powers of trustees or other persons under a statute or otherwise. When such a point is put to the court there is usually absolutely no dispute as to the facts, which are put in evidence for the sole purpose of explaining how the point which the court is asked to adjudicate on has arisen, and how the persons who are parties

to the application are concerned in it. For the most part the evidence on such an application is put in by the plaintiff, and although the defendants (there are usually more than one) are always given an opportunity to put in evidence "in answer," such evidence as is put in by defendants is usually much more an amplification of the evidence already filed than the expression "evidence in answer" suggests. In the case of the usual summons for construction, or for determination of a question relating to the powers of any person, the taking of evidence by affidavit is not only inexpensive but also perfectly satisfactory.

Facts in dispute

Occasionally, however, questions of fact have to be decided on applications made by originating summons. Such questions arise, for example, where the intentions of a person have to be determined: one instance is where a deceased person has made a gift of property to another before his death, and the question arises whether the gift constituted a *donatio mortis causa*. In such a case, the ordinary procedure by originating summons is only satisfactory if the facts are wholly or largely agreed between the contestants and the issue between them is one of law (e.g., can a particular kind of savings account be the subject of a valid *donatio*?). If the facts are not so agreed, the matter can only be disposed of satisfactorily if notice is given to cross-examine the persons who have deposed on the questions of fact which are at issue upon their affidavits. This is the usual course taken by parties to applications by originating summons if questions of fact are in dispute, and the practice is satisfactory enough where the area of the dispute is small.

Cross-examination of a deponent on his or her affidavit evidence is, of course, open to any party to an originating summons taken out under Ord. 54F. An order of the master is required (r. 9), but I have never heard of a case where such an order has been refused. Alternatively, this rule enables the court or a judge to direct any person on whom notice of the proceedings has been served to attend on the hearing of the application and give evidence orally. The practical result of this rule is that if a person has been directed to attend for cross-examination on his or her affidavit evidence, at the hearing of the application such person is very usually permitted to give evidence-in-chief orally, either on matters which have not been touched upon in that person's affidavit evidence, in supplementation of such evidence, or on his or her case at large, in substitution for the evidence given by affidavit. In the latter event, the oral evidence tends to be much fuller than the evidence given previously by affidavit.

Working in the dark

The consequence is that, if parties are directed to attend for cross-examination on an application under this Act, something very like a full scale witness action may be tried, on oral evidence. But there are no pleadings, nor anything in the nature of pleadings, for the summons merely asks that maintenance may be awarded to the plaintiff (or to the plaintiff and a defendant or defendants if, e.g., a widow and children apply for maintenance, the children being then made defendants); nothing about the applicant's case on the facts emerges from the summons. Nor are the parties, except in a very special case (such as, to my knowledge, has never yet come before the courts), entitled to discovery of documents as against each other (*Re Borthwick* [1948] Ch. 645), so that one of the best checks upon the accuracy of oral testimony is absent in these applications.

The rules in Ord. 54F were once described as "providing in relation to this novel and very special type of jurisdiction a scheme of procedure which would enable the judge exercising that jurisdiction to have the fullest control over the proceedings and to secure that all evidence which appeared to him to be material should be brought before him" (*per* Lord Greene, M.R., in *Re Borthwick, supra*). What these rules do not secure, however, is that the parties to the contest —the disinherited widow on the one side, and the beneficiaries under the deceased's will on the other, in the most typical case which arises under the Act—are given adequate notice on all occasions of the case which is to be presented by the opponent, and an opportunity of checking the accuracy of the evidence to be led in support of the case by reference to the documents in the possession of the opponent. The evidence being at large, the trial of an application under the Act can often depart from the model of a trial with which we are familiar in English law, a contest *inter partes*, and assume the unfamiliar shape of an inquisition.

Additional powers needed

The remedy for this state of affairs lies in a frank acknowledgment that Ord. 54F, made with the best of intentions, does not work well in practice in any case in which there is any considerable opposition to the claim for maintenance under the Act. In addition to the power of directing persons to attend for cross-examination or to give oral evidence given by r. 9, the court should have a power to order points of claim to be delivered by the plaintiff and points of defence by any defendant who wishes to contest the claim, and to order that, if points of claim and defence are delivered, evidence in support thereof should be given (except perhaps on matters on which there is complete agreement) orally, subject to cross-examination, on the lines of the procedure which now regulates the hearing of misfeasance summonses under the Companies Act. The present rule as to discovery should be amended to give power to the court to order discovery on reasonable cause shown by the party applying. There would be nothing in such amendments of the present practice to affect the control which *ex concessis* it is desirable that the court should have over applications in a jurisdiction which frequently probes very deeply into the secrets of domestic life. But they would make it possible for contestants in what is likely to be a hotly disputed claim to go into court with sufficient information of the opponent's case to be able to test it fairly in the light of ascertainable and ascertained facts. Is that a desirable and a practicable aim? Most practitioners with experience of this jurisdiction to whom I have spoken on the subject have agreed with me that it is.

"A B C"

Mr. EDGAR BRADBURY, assistant solicitor to St. Helens County Borough Council, Lancs, has been appointed deputy town clerk of Loughborough in succession to Mr. E. G. Thomas.

Mr. GEORGE MUTCH, assistant solicitor to Nuneaton Corporation, has been appointed to a similar post at Sutton Coldfield, Warwickshire.

Mr. HERBERT GEORGE WHEWAY, town clerk of Stamford, Lincolnshire, has been appointed clerk and solicitor to Sodbury Rural District Council in succession to Mr. L. C. Rysdale.

Mr. CHARLES HARKNESS YOUNG, solicitor, of Ely, has been appointed coroner for the Isle of Ely, Southern District, in succession to Mr. Edgar Rowland Ennion, who has resigned.

Landlord and Tenant Notebook

CERTAINTY OF COMMENCEMENT

" For regularly in every Lease for yeares the terme must have a certaine beginning, and a certaine end . . . " wrote Coke (I, Ch. VII, s. 48). We all know that modern legislation has considerably weakened the force of that pronouncement as regards " certaine end " ; those who regret the change may derive some comfort from the thought that the " certaine beginning " is still valid.

I was reminded of the requisite when reading the judgment of Harman, J., in *Hughes* v. *Waite and Others* [1957] 1 All E.R. 603. Briefly, what the learned judge decided was that three of the defendants in a mortgagee's possession action, who had entered into agreements with the mortgagors by which they were to have tenancies of flats in the mortgaged property, had acquired no title ; this because the agreements were made with the mortgagors before the latter had either title or possession, and because payments made, described as " advance rent," constituted " fines " and any power of leasing which the mortgagors would have had would have been exceeded. Either of these points was conclusive, and the passage which reminded me of Coke's statement (and which I will set out later) was *obiter*.

The arrangements

The three defendants with whom I am concerned (the mortgagors did not in fact appear) and whom Harman, J., described variously as gulls and as fish, negotiated with the other defendants in August and September, 1955. First taking their cases separately :

M paid them £20 on 20th August, £100 on 3rd September, and £281 14s. on 9th September. They acknowledged the first payment by a document saying : " Application for unfurnished accommodation. Received from Mr. *D. M.* the sum of £20 on middle floor, 136 Burnt Ash Hill." The second payment was described as a " deposit," the third was not characterised ; but both were said to be received by the payees as stakeholder. He was let into possession on 5th November.

C paid them £25 on 23rd August, and £250 18s. on 31st August. The first payment was acknowledged by a receipt similar to the first receipt handed to *M* but stating that the money was paid " in respect of advance rent, 136 Burnt Ash Hill, top flat " and describing it as a " holding deposit " ; the second payment was said to represent the balance of three years' rent in advance for that flat. On 9th September the payees wrote him a letter to that effect, also " confirming the following points as requested by yourself. (1) The tenancy to commence after the completion of conversion and decorations of flat. (2) The tenancy is a weekly one. (3) Should you vacate the flat on one week's notice any balance of rent will be refunded. Please note that any other points are clearly stated on receipt. Assuring you of our best attention at all times." He was let into possession on 31st October.

D paid them £200 on 24th September, the money being described on a receipt as " holding deposit on middle flat." She was let into possession on 21st November.

Common to all three cases appears to have been a statement in the documents : " At the end of the advance term, rent to be paid weekly or by mutual arrangement." The only indication of what was meant by the " advance term " was suggestions in affidavits that oral agreements had been made for weekly agreements or else for three year terms to be followed by weekly tenancies.

The mortgage

While these sums were being collected, the payees were in fact negotiating with the plaintiff for the purchase from her of No. 136 Burnt Ash Hill (which, as will have been gathered, was a house in process of conversion into flats), part of the purchase money to be " left on mortgage " ; but it was not till 26th October that a contract for sale was made and a charge for the agreed part of the price executed. Conveyance and charge were registered on 14th November. In May, 1956, nothing having been paid under the mortgage, the plaintiff sought possession ; the mortgagors had disappeared ; the other three defendants pleaded tenancies and three years' advance payment of rent.

Implied agreement ?

I have mentioned the actual grounds of the decision already. For the purposes of this article, what intrigues one is the learned judge's view of what might have been, given in the following passage : " The bargains were agreements, if they were agreements at all, to let these people into possession at some time. There was no date or term fixed for the time when possession should begin. No doubt when possession was taken the court would have implied some kind of agreement between the occupants and the W's [the mortgagors] that the occupants should have possession, and possibly on the terms that they should remain there for three years on the strength of the sums that they had paid, or that they should remain there from week to week and get back any proportion of the sum remaining in the landlord's hands if the occupation came to an end before the three years expired . . . "

Courts will, no doubt, more readily find implied agreements to-day than they did in Coke's time ; but " some kind of agreement, etc." would, I submit, be difficult to infer after finding " there was no date or term fixed for the time when possession should begin." In *Marshall* v. *Berridge* (1881), 19 Ch. D. 233 (C.A.), Lush, L.J., made the terse statement : " Now it is essential to the validity of a lease that it shall appear either in express terms or by reference to some writing which would make it certain, or by reasonable inference from the language used, on what day the term is to commence. There must be a certain beginning and a certain ending, otherwise it is not a perfect lease . . . " and, though the documents evidenced agreement on rent and on the length of the term (with options), it was held that as they did not show when the term was to commence, specific performance of an alleged agreement for a lease could not be granted. The real dispute in that case concerned the construction of a provision said to amount to a condition ; likewise, in the more recent case of *Edwards* v. *Jones* (1921), 124 L.T. 740 (C.A.), the real trouble was about a right of way, but it was the failure to specify or indicate commencement that proved the determining factor. And as, in that case, what was meant to represent the terms of a contract had, with some care, though not professional care, been reduced to writing, the decision gives us a very striking example of the importance of a " certaine beginning."

"Lease to be drawn out after . . ."

The defendant in *Edwards* v. *Jones*, a dealer in milk living in London, had, in August, 1918, bought an estate in Wales; the plaintiff held a short tenancy of part of it, and was anxious to retire to the other part when his tenancy expired. Completion date was to be 28th or 29th September, and on the 2nd of that month the plaintiff and one Evans, who knew the defendant personally, journeyed to London and interviewed the latter. At the conclusion of the interview, Evans wrote out a document which both parties signed: "An agreement made 2nd September, 1918, between *J J* of, etc., of the one part, and *J D E*, etc., of the other part: (1) *J J* agrees to grant a lease for ninety-nine years of, etc., together with . . . the right of way from, etc.; (2) *J D E* agrees to pay *J J* the sum of £2 10s. as ground rent; (3) A legal lease to be drawn out after *J J* gets possession of the whole of the S.H. land and premises on the 29th September next."

Completion of the sale of the estate actually took place in the middle of October and the plaintiff moved in on 22nd November; but when the "drawing out" of the legal lease was attempted, the parties quarrelled about the extent of the right of way to be included. But when the plaintiff sought specific performance, the defendant (after taking a bad point about the frequency of payment of ground rent, no period being named) actually succeeded on the ground that there was nothing to show when the ninety-nine years' term was to begin.

Peterson, J., with whom a majority of the Court of Appeal subsequently agreed, examined the position with great thoroughness, but declined to accede to an argument that the document evidenced an agreement for a lease to commence on 29th September: what was meant, it was held, was that as the defendant had not yet completed his purchase, there would be no point in drawing up a lease yet. An alternative argument urging that 22nd November, when possession was taken, was the correct commencement date, was met by reference to *Blore* v. *Sutton* (1817), 3 Mer. 237, in which a memorandum which mentioned a term of ninety-nine years and a rent rising to £170 a year had been "acted upon" by the intending tenant, he actually spending a good deal of money in building. The document did not even specify the commencement of the lease.

In the face of such authorities it would, I submit, have been impossible for the three deluded defendants in *Hughes* v. *Waite* to have recovered more than judgment for the return of their payments from their co-defendants if the latter had had possession or an interest when the "bargains" were made. For though one defendant, *D*, was actually let into possession after registration of the charge, no date or term had been fixed by those bargains when possession was to begin.

R. B.

HERE AND THERE

NO DEMAND

AMID the wider menaces of industrial unrest and foreign perplexities, there is still room in the public mind for the mystery of South Uist, and rightly so since in every exercise of the Government's overriding powers of compulsory acquisition the victims may well say to the rest of us "*Hodie mihi, cras tibi.*" The mystery is deepened rather than clarified by the latest semi-official pronouncement on the subject by Lord Mancroft, Parliamentary Secretary to the Ministry of Defence, who denied in a speech at Cambridge that the Government had double-crossed the islanders, claimed that it had leant over backwards to play fair and said that a public inquiry would have been held if one had been demanded. Those of us who are not Ministers or Parliamentary Secretaries or officials in the compulsory acquisition departments can only conclude that in the esoteric language of Governmentese "demand" has some highly technical meaning utterly remote from its meaning in the spoken or written word either of the educated or the uneducated. Members of Parliament to the number of 168 (more than one-quarter of the House) demand a public inquiry but that is not a demand within the meaning of the secret tongue. Indeed, they were officially informed on behalf of the Government that their motion did not "constitute an objection of substance." Prominent and distinguished men all over Scotland have expressed opposition to the project. The clergy, the natural leaders of the islanders, have demanded a public inquiry but obviously these are not "demands" either. In the name of the Oxford English Dictionary, what *would* constitute a demand? What forms in triplicate threaded through what labyrinthine ritual could pierce to the point where the word "demand" means the same thing to the man inside and the man outside a Government department? Even if the crofters, a remote and simple community, were a trifle slow in appreciating the full implications of what was proposed to be done to them and reacting accordingly, they are reacting now even to the extent of contemplating mass emigration to Canada or Ireland to preserve their way of life. Even now it is not clear what really is proposed to be done to the island. One Government spokesman confidently declared that no additional demands have been made since details of the scheme were published last summer. Another said that the precise scope of the rocket establishment has not yet been finally determined. Is it a fact that it is intended to intrude 9,000 strangers into this little island? Or not?

HOLDING ONE'S OWN

THE matter has been brought to a head by the serving on individual crofters of notices that the landlords are applying to resume the land required as a preliminary to selling it to the Ministry. These applications are to come before the Scottish Land Court, which will consider whether they are in the public interest. For an Englishman without knowledge of the constitution and functions of the court, of its jurisdiction, of the limits within which it works and of the matters which it is entitled to take into consideration and the evidence which it is entitled to admit or to call for, it is impossible to estimate how fully the story will be unfolded at the hearing or to know whether a public inquiry would elicit a wider range of revelations. If the case for the officials is as good as their spokesmen in Parliament suggest, it is hard to see why they should be so shy of embracing an opportunity of publicly demonstrating it to be so. Persistent refusal suggests, at the least, a curious *gaucherie*. The system of compulsory acquisition is, at its best, heavily weighted against those who attempt to defend their own. The procedure leaves the objector groping in the dark, not knowing what he is really up against. On this topic one may commend

a booklet lately published, " Justice and the Administration," by Gordon Borrie. One does not wish to assume that the Government is always wrong, but a power which habitually resorts to statutory bulldozing puts itself in the wrong by neglecting to ensure that justice shall seem to be done. To return to South Uist. If the inhabitants were a colony of sea birds, their protection would, doubtless, be sedulously considered. A complete and self-sufficient community of human beings, farmers, fishermen, labourers, shop-keepers, doctors and teachers with their own language and their own customs are enough of a happy rarity to-day for the public, the nation, to have an interest in letting them be, save in the face of the most unavoidable necessity. If it were proposed to shoot the whole community as kulaks and bourgeois impeding a highly progressive proposal no doubt even the *blasé* mind, which has, in the last few years, supped full of horrors, would be shocked. But it is only a shade less injurious to murder a community's way of life by alien intrusion, to escape from which its members are ready to go into exile. Lord Mancroft said that the Government had leant over backwards to be fair to the islanders. Now, perhaps, for their final satisfaction, it will lean over forwards to show that there is nothing hidden up its sleeves.

RICHARD ROE.

PRACTICE NOTES

MATRIMONIAL CAUSES

On 30th April, 1957, the amendments to the Matrimonial Causes Rules brought about by S.I. 1957 No. 176 (L.2) take effect (*see* p. 178, *ante*). The amendments do not in general affect proceedings commenced before 30th April. The following Practice Notes issued by the Divorce Registry are intended to take effect on that date.

Practice Note, 5th March, 1957
Petition : Prayer for discretion

Where a petition filed on or after 30th April, 1957, contains a prayer that the court will exercise its discretion, the full wording set out in r. 4 must be employed, including the words " notwithstanding the adultery of the petitioner during the marriage."

B. LONG,
Senior Registrar.

Practice Note, 5th March; 1957
Petition : Address of Petitioner

Where it is sought to obtain a Registrar's order, under r. 4 (1) (*d*), that the residence of a petitioner be omitted from the petition, the following procedure should be adopted.

The petition should be filed, the address having been omitted from it, but not from the affidavit verifying it. The solicitor should apply, *ex parte*, on an affidavit by the petitioner stating the address and the grounds of the application.

If this is granted, the Registrar will order that the copy petition to be served shall omit the affidavit that is part of the document; that a similar copy shall be lodged with the papers —the Marriage Certificate being annexed thereto; that the original petition and the affidavit in support of the application be enclosed in a sealed envelope, and be not opened without leave of the court; the envelope being so endorsed; and that any subsequent affidavit may be worded " I *A.B.* the above-named Petitioner, whose address is retained on the court file under seal, by virtue of an order dated . . ., make oath and say : ".

If the application is refused, the Registrar will make an order directing amendment of the petition before it is served.

B. LONG,
Senior Registrar.

Practice Note, 5th March, 1957
Ancillary Relief : Applications for leave

(i) At any time up to the hearing of a cause, the omission of a prayer for ancillary relief from a petition or answer may be remedied by an application under r. 15 or 19 for leave to amend the pleading, reservice of which will normally be ordered.

(ii) An application under the proviso to r. 3 (3) for leave to make an application for ancillary relief which should have been included in the petition or answer must be made to a judge on summons which should be supported by affidavit. If in such cases an extension of time is necessary under r. 44 (1), it should be sought in the same summons.

(iii) In cases in which the leave of a judge under the proviso to r. 3 (3) is not required, an application for extension of time under r. 44 (1) may be made to a Registrar on summons, supported by affidavit.

(iv) In cases (ii) and (iii) the summons and affidavit should be served on the respondent to the application, whether or not he has entered an appearance.

(v) The Practice Note dated the 17th May, 1955, is hereby cancelled.

B. LONG,
Senior Registrar.

BOOKS RECEIVED

The Stock Exchange Official Year Book 1957. Volume 1. Editor-in-Chief: Sir Hewitt Skinner, Bt. pp. cxlvi and 1790. 1957. London: Thomas Skinner & Co (Publishers), Ltd. £8 net (two volumes).

Police Law. Fourteenth Edition. By CECIL C. H. MORIARTY, C.B.E., LL.D. pp. xx and (with Index) 618. 1957. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Restrictive Trade Practices. The Business Man's Guide to the Act. By K. C. JOHNSON-DAVIES, T.D., M.A. (Cantab.), of Gray's Inn, Barrister-at-Law, and R. D. HARINGTON, of Gray's Inn, Barrister-at-Law. With a Foreword by SIR MILES THOMAS, D.F.C., M.I.Mech.E., M.S.A.E. pp. (with Index) 205. 1957. London: MacDonald and Evans, Ltd. £1 5s. net.

" Current Law " Income Tax Acts Service [CLITAS]. Release 37: 11th March, 1957. London: Sweet & Maxwell, Ltd.; Stevens & Sons. Edinburgh: W. Green & Son.

Ranking, Spicer & Pegler's Mercantile Law. Tenth Edition. By W. W. BIGG, F.C.A., F.S.A.A., and R. D. PENFOLD, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. liv and (with Index) 415. 1957. London: H. F. L. (Publishers), Ltd. £1 1s. net.

The Law of the Parish Church. Third Edition. By W. L. DALE, LL.B., of Gray's Inn and the North Eastern Circuit, Barrister-at-Law. pp. xxiii and (with Index) 157. 1957. London: Butterworth & Co. (Publishers), Ltd. 18s. 6d. net.

Mixed Charities. A reprint from THE SOLICITORS' JOURNAL. By the late A. H. WITHERS, of Lincoln's Inn, Barrister-at-Law. With a Modern Commentary by SPENCER G. MAURICE, of Lincoln's Inn, Barrister-at-Law. pp. 24. 1957. London: The Solicitors' Law Stationery Society, Ltd. 4s. net.

Butts' Modern County Court Procedure. Supplement to Fourth Edition, 1956. pp. 8. 1957. London: The Solicitors' Law Stationery Society, Ltd. 2s. net.

REVIEWS

Jervis on the Office and Duties of Coroners with Forms and Precedents. Ninth Edition. By W. B. PURCHASE, C.B.E., M.C., M.B., D.P.H., of the Inner Temple, Barrister-at-Law, and H. W. WOLLASTON, of the Middle Temple, Barrister-at-Law. 1957. London : Sweet & Maxwell, Ltd. £4 4s. net.

With the exception of " The King's Coroner," written chiefly on the historical and statutory aspects of the office of Coroner in 1905 by R. Henslowe Wellington, who, on his own admission, had had very little practical experience of the duties of a coroner, " Jervis " has been the only reference book on the subject since it was written by Sir John Jervis in 1829. The Chief Editor of the book under review, who was also responsible for the eighth edition in 1946, is Dr. W. Bentley Purchase, the honorary secretary of the Coroners' Society of England and Wales. " Jervis " has now grown to 565 pages. Since the last edition there have been promulgated the Coroners Rules, 1953, for the first time in the history of coroners (over 750 years) prescribing —to quote the editors—the practice and procedure to be followed by coroners on certain matters. This seems to envisage a " Coroners' White Book." Then there have been the Coroners' Record (Fees for Copies) Rules, 1954, the Coroners (Fees and Allowances) Rules, 1955, and the Coroners (Indictable Offences) Rules, 1956. By the Coroners Act, 1954, power was given to the Home Secretary to prescribe the fees and allowances to be paid to witnesses and to medical practitioners making post-mortem examinations, an increase of, in particular, the latter being long overdue. The Road Traffic Act, 1956, by s. 8, created a new motoring offence, that of causing death by driving a motor recklessly or dangerously, for which a maximum term of five years' imprisonment is prescribed. Section 20 of the Coroners (Amendment) Act, 1926, is made to apply to this offence as it does to manslaughter. Lack of space prevents detailed reference here to such important statutes as the Corneal Grafting Act, 1952, and the Visiting Forces Act, 1952, but the reason for the enlargement of " Jervis " becomes abundantly evident. The coroners' court is a court of the people presided over by a judicial officer appointed, as no other judge in this country is, by the people. Any interested party is entitled to be heard by the coroner and, if there is one, his jury. No formal appearances have to be entered and no fees paid. Apart from inquiries into treasure trove and certain fires in London, the purpose of an inquest is to investigate sudden, violent and unnatural deaths, and the importance of this function is becoming increasingly apparent. There is little one can object to in " Jervis, 1957." To assist those who are not acquainted with its subject and have to refer to it only occasionally, it might be more fully indexed. The embellishment of each chapter with scraps of light verse and with trite quotations is hardly appropriate to an important legal text-book. Otherwise nothing but good can be said about it.

The Law of Road Traffic. Second Edition. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (Lond.), of the Middle Temple, Barrister-at-Law. 1957. London: Shaw & Sons, Ltd. £1 17s. 6d. net.

The second edition of this book has been produced to cover the changes made by the Road Traffic Act, 1956. The book starts with an account of the general statutory duties and responsibilities of drivers of motor vehicles and sets out parts of the regulations relating to the construction and use of vehicles, driving licences and lighting. Statutory provisions are also included together with notes of the cases thereon and, in some instances, extracts from the judgments. The Highway Code is printed in full and then the subjects of dangerous and careless driving and driving or being in charge under the influence of drink are discussed. Part III of the book covers the civil law relating to motor vehicles and road traffic generally and includes the changes made by the Hotel Proprietors Act, 1956. The last part of the book deals with insurance. The law is stated as at 1st January, 1957.

Generally, the subjects are adequately covered, although we would like to have seen more space devoted to the very common offence of obstruction. There are a few other points of criticism, the main ones being the absence of any reference to the speed limits applicable to vehicles of particular types and the absence of any reference, in the section dealing with the Vehicles (Excise) Act, to the changes made by the Finance Act, 1953, s. 33, and the Finance Act, 1956, s. 5. The subject of being in charge under the influence of drink has been properly covered having regard to the changes made by the new Act, but we would suggest more prominence be given to the English decisions rather than to the Scottish ones. Four English decisions are cited in a footnote only and, of these, two relate to special reasons and not to the offence of being in charge. The book is sound on the civil law side and several of the sections dealing with criminal offences are excellent. The book will be found to be a useful guide for all who are concerned with these cases and for the solicitor who does not frequently deal with road traffic matters.

Jennings' Law of Food and Drugs. Second Edition. By The Hon. GERALD PONSONBY, M.A., of the Middle Temple and Oxford Circuit, Barrister-at-Law. 1957. London : Charles Knight & Co., Ltd. £2 15s. net.

This book contains the Food and Drugs Act, 1955, and the statutes relating to slaughter-houses and slaughter of animals. There is also an introduction which, in the author's words, is intended to be not so much an aperitif as a menu so that those who find themselves dipping into an indigestible statutory dish may pause to obtain a more comprehensive view of the legislative repast. The notes to the Act are extensive and the cross references appear to be complete ; all the relevant cases seem to have been mentioned and the user of the book will find that it gives a full picture of the statute and case law on the subjects with which the book deals. Although the book does not contain the regulations relating to food and drugs it can be recommended to advocates who practise in these subjects and to clerks of local authorities and public health inspectors. Those who buy it will find that the subject is fully covered and the book is a valuable addition to the rather few text-books on this branch of the law.

The Discharge and Modification of Restrictive Covenants. By G. H. NEWSOM, Q.C., of Lincoln's Inn. 1957. London: Sweet & Maxwell, Ltd. £2 5s. net.

The contents of this book must be described in some detail in order that practitioners may be able to judge whether it will be sufficiently useful to them to justify purchase. The book begins with a Preface, acknowledgment, Table of Contents, Table of Cases and Table of Statutes, together occupying 16 pages. The main text, divided into ten chapters, is contained in 49 pages. This is followed by reports of 74 decisions of the Lands Tribunal extending over 275 pages and reports of 13 decisions of the High Court and Court of Appeal extending over 111 pages. The book is completed by extracts from statutes and rules (22 pages), a statement of some unusual statutory jurisdictions (2 pages) and the index (4 pages).

All except one of the decisions in the High Court and Court of Appeal have previously been fully reported in the Law Reports or Weekly Law Reports (and in other series) and the reports in this volume are apparently reprints. The gathering together of the examples of decisions of the Lands Tribunal is far more useful particularly, as the author states, because it is proposed that later relevant decisions will be reported in the *Planning and Compensation Reports*. The authority having jurisdiction under the Law of Property Act, 1925, s. 84, before 1950 did not often give reasons but the Lands Tribunal state the grounds of their decisions in writing and so it is now possible to provide something in the nature of a collection of precedents.

The broad conclusion is that this is very much a specialist reference book. It covers a relatively small field extremely thoroughly. The chapters of exposition which deal in turn with various aspects of the jurisdiction under the Law of Property Act, 1925, s. 84, are very helpful and discuss practical problems in a realistic manner. A good example is the explanation of the relationships of restrictive covenants to planning legislation. However, we are not able to find any reference to discharge or modification of covenants pursuant to the Requisitioned Land and War Works Act, 1945, or to certain statutory powers to act in defiance of covenants such as that contained in the Town and Country Planning Act, 1944, s. 22 (as re-enacted by the Town and Country Planning Act, 1947, Sched. XI). Although action under these powers is normally taken by public authorities they should be mentioned in a book bearing this title and containing so detailed a description of its subject-matter.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

AUSTRALIA: CONCILIATION AND ARBITRATION COURT: JUDICIAL FUNCTIONS: CONSTITUTIONALLY INVALID

A.-G. for Australia *v.* R. and the Boiler Makers' Society of Australia and Others

[And connected Appeal (Consolidated)]

Viscount Kilmuir, L.C., Viscount Simonds, Lord Morton of Henryton, Lord Tucker, Lord Cohen, Lord Keith of Avonholm, Lord Somervell of Harrow. 19th March, 1957

This was a consolidated appeal, by special leave, by the Attorney-General for Australia and three judges of the Commonwealth Court of Conciliation and Arbitration from a judgment and order of the High Court of Australia dated 2nd March, 1956, which, by a majority of four judges to three, made absolute an order *nisi* for a writ of prohibition directed against the three judges of the Court of Conciliation and Arbitration and the Metal Trades Employers' Association. The order for the writ of prohibition made by the High Court prohibited further proceedings under two orders of a judicial character made by the Arbitration Court of 31st May and 28th June, 1955. The first order required obedience by the respondent Boiler Makers' Society of Australia to a provision in an industrial award called " The Metal Trades Award," by ceasing to be a party to or concerned in a ban on work. The second order fined the society £500 for failure to comply with the first order. The questions in this appeal—stated to be constitutional questions of great and general importance—were whether it was constitutional for the Commonwealth Parliament to grant both judicial and non-judicial powers to judges appointed for life, and, if not, whether in the case of such a grant to judges of the Commonwealth Court of Conciliation and Arbitration it was the grant of judicial or non-judicial powers which failed. The High Court of Australia decided that it was unconstitutional to combine judicial and non-judicial power, and that in the present case it was the grant of judicial power that was invalid.

Viscount Simonds, giving the judgment, said that it was beyond dispute that there had been vested in the Conciliation and Arbitration Court established by the Conciliation and Arbitration Act, 1904–52, powers, functions and authorities of an administrative, arbitral, and executive character, and it became clear from ss. 29 and 29A of the Act that so also was judicial power vested in it, even to the extent of fining a citizen or depriving him of his liberty. The problem was: " It is permissible under the Constitution of the Commonwealth for the Parliament to enact that upon one body of persons, call it tribunal or court, arbitral functions and judicial functions shall be together conferred ? " The problem could be solved only by an examination of the Constitution. The Constitution was based on a separation of functions of government, and s. 71 and the succeeding sections of chap. III, dealing with " The Judicature," while affirmatively prescribing in what courts the judicial power of the Commonwealth might be vested and the limits of their jurisdiction, negatived the possibility of vesting such power in other courts or extending their jurisdiction beyond those limits. Chapter III was in its terms detailed and exhaustive, and to it alone Parliament must have recourse if it wished to legislate in regard to the judicial power, subject to the qualification that under s. 51 (xxxix) of the Constitution Parliament was empowered to make laws in respect of matters incidental to the execution of the power conferred by chap. III. There was nothing in chap. III which justified the union of judicial and non-judicial power in the same body. Their lordships had thought it right to make an independent approach to what was, after all, a short, if not simple, question of construction of the Constitution. They must add that the exhaustive examination of the problem and the review of the relevant authorities in the majority judgment of the High Court appeared to lead inevitably to the conclusion which they and the High Court had reached.

The validity or invalidity of the sections of the Conciliation and Arbitration Act which purported to give the Arbitration Court judicial power was not a question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States within the meaning of s. 74 of the Constitution, and a certificate under that section was not therefore necessary to the competency of the Board to entertain this appeal, which would be dismissed.

Appearances: *K. H. Bailey* (Solicitor-General for the Commonwealth), *D. I. Menzies*, Q.C., and *C. I. Menhennitt* (all of Australia) (*Coward, Chance & Co.*); the respondents were not represented, but the respondents the Boiler Makers' Society of Australia lodged a printed case (*Waterhouse & Co.*).

[Reported by Charles Clayton, Esq., Barrister-at-Law] **[2 W.L.R. 607**

AUSTRALIA: STATE ACT GRANTING LONG SERVICE LEAVE: NOT INCONSISTENT WITH COMMONWEALTH INDUSTRIAL AWARD

Charles Marshall Pty., Ltd. *v.* Collins

Viscount Simonds, Lord Morton of Henryton, Lord Cohen, Lord Somervell of Harrow. 19th March, 1957

Appeal from the High Court of Australia.

The Factories and Shops (Long Service Leave) Act, 1953, of the State of Victoria imposes upon employers the obligation to grant their employees thirteen weeks' long service leave with pay after twenty years' of continuous service and, in certain cases, leave *pro rata* for shorter periods of service. The appellant company, which was prosecuted at the instance of the respondent, a factory inspector, for not granting a dismissed employee named Kemp pay for a period of long service leave to which he was admittedly entitled under s. 7 (2) (*c*) of the Act, contended that the State Act was inconsistent with provisions of the Metal Trades Award, 1952, made under the Commonwealth Conciliation and Arbitration Act, 1904–52—the award itself being part of the law of the Commonwealth—and therefore invalid to the extent of the inconsistency under s. 109 of the Commonwealth Constitution, which provided that in the case of inconsistency between a State and a Commonwealth law the former shall, " to the extent of the inconsistency, be invalid." The Metropolitan Industrial Court at Melbourne dismissed the information on the ground of the alleged inconsistency. On appeal, the High Court of Australia, consisting of seven judges, unanimously held that there was no inconsistency and remitted the information for rehearing. The company appealed.

Lord Somervell of Harrow, giving the judgment, said that the appellant submitted, *inter alia*, that the award on its true construction regulated all the terms and conditions of employment; that it occupied the whole field; that long service leave was a term or condition of employment; and that therefore the State Act so far as applicable to metal trade workers was inconsistent with the award although the award made no reference to long service leave and did not purport to deal with it. The award was a composite document which dealt with basic wages, margin wages, apprenticeship, travelling and camping allowances, hours of work, overtime, holidays and Sunday work, contract of employment, annual and sick leave and other miscellaneous matters which need not be enumerated. There was no reference to long service leave. Their lordships agreed with the High Court that long service leave was an entirely distinct subject-matter from those which were determined and regulated by the award. In other words, long service leave differed in kind from public holidays and from annual leave. It was a separate item in industrial relations. There were no grounds in principle or authority for construing the award as covering the " field " of long service leave. There was no inconsistency and the appeal would be dismissed. The appellant would pay the costs of the appeal.

Appearances: *D. I. Menzies*, Q.C., *R. M. Eggleston*, Q.C. (both of Australia), and *Robert Gatehouse* (*Park Nelson & Co.*); *Gregory Gowans*, Q.C. (Australia), and *J. G. Le Quesne* (*Freshfields*).

[Reported by Charles Clayton, Esq., Barrister-at-Law] **[2 W.L.R. 600**

Court of Appeal

AGRICULTURAL HOLDING: COMPENSATION: NOTICE: VALIDITY

Boyd *v.* Wilton

Jenkins, Morris and Sellers, L.JJ. 5th March, 1957

Appeal from Liskeard County Court.

Within two months of the termination of an agricultural tenancy the landlord served a notice on the tenant under s. 70 of the Agricultural Holdings Act, 1948, of his intention to make certain claims under the Act. The notice set out that the claims were made under the conditions of letting, s. 57 of the Act of 1948, and the customs of the country. The tenant alleged that the notice was invalid and contrary to s. 57 (3) in that it set out alternative claims. At the arbitration the landlord abandoned all claims except those arising under the agreement. The arbitrator stated a case for the opinion of the county court judge, who held that the notice was a valid one.

JENKINS, L.J., said that s. 57 was dealing with rights to compensation and not with methods of enforcing rights or questions of procedure. Section 57 (3) could be construed as meaning that no one was to have an effective and enforceable claim to compensation both under a contract of tenancy and under subs. (1). There was nothing in s. 57 to say that if a claim was put forward on both grounds in respect of any one holding, the landlord should be disqualified from receiving compensation on either ground. It was clear that at some stage there had to be an election when the landlord must decide which alternative he was going to adopt, but there was nothing in s. 57 (3) to disqualify him from recovering at all. In the circumstances the judge was right in the conclusion to which he came.

MORRIS, L.J., agreeing, said that he read the word "claim" in subs. (3) as meaning claim to be entitled to recover. But in the present case the landlord had never said or done anything which indicated a defiance of subs. (3). He had never claimed to be entitled to recover compensation both under subs. (1) and under the written contract of tenancy.

SELLERS, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *D. M. Scott* (*Robbins, Olivey & Lake*, for *Stephens & Scown*, St. Austell); *Anthony Cripps* (*Blight, Son & Broad*, Calington).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 636

RENT TRIBUNAL APPROVING INCREASE OF RENT: WHETHER CONTRACTUAL RENT OVERRIDDEN

Villa D'Este Restaurant, Ltd. *v.* Burton

Lord Evershed, M.R., Morris and Ormerod, L.JJ.

13th March, 1957

Appeal from Marylebone County Court.

After the rent reserved by a letting of premises, to which the Furnished Houses (Rent Control) Act, 1946, applied, had been approved by a rent tribunal and registered, there was a change of tenant and a new contract of letting at the approved rent. The landlords referred the case to the tribunal for reconsideration of the rent and the tribunal increased the rent from £393 11s. to £452 12s. 6d., but the tenant refused to pay the increase, except in so far as it related to an increase in the rates which he had contracted to pay. The landlords brought proceedings in the county court claiming £15 7s. 6d., being the amount underpaid if the increase was upheld. The county court judge gave judgment for the tenant and the landlords appealed.

MORRIS, L.J., delivering the first judgment, said that the county court judge had dealt with the matter on the supposition that the tribunal had been acting under s. 2 (4) of the Act of 1946, but both parties understood that the application was made under s. 2 (3) and the appeal was argued on that basis. By that subsection the powers conferred by subs. (2) (which *Bowness* v. *O'Dwyer* [1948] 2 K.B. 219 showed could override the contractual terms) included power to increase the rent. The exercise of that power would alter an existing contract and impose on the tenant liability to pay the increased rent.

ORMEROD, L.J., agreed.

LORD EVERSHED, M.R., dissented. His lordship said if the landlords' submission was accepted s. 4 would not have taken its existing form. In the later Act in *pari materia* with the Act of 1946 (the Housing Repairs and Rents Act, 1954) when Parliament desired to provide in the landlord's favour for the substitution of a higher rent for that expressed in the contract, it did so in clear language (s. 40 (2)). The tenant's submission would not render the powers under s. 2 (3) of the Act of 1946 ineffective, for the rent provided in the lease could be stated to include any such further sum, if any, that might be authorised. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *Michael Sherrard* (*Hunters*); *J. T. Plume* (*Asher, Fishman & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 586

CONFLICT OF LAWS: DOCTRINE OF UNIVERSAL SUCCESSION: FOREIGN LAW SUBSTITUTING NEW COMPANY FOR OLD COMPANY HAVING ENGLISH DEBTS

Metliss *v.* National Bank of Greece and Athens S.A.

Denning, Romer and Parker, L.JJ. 18th March, 1957

Appeal from Sellers, J.

In 1927 a Greek bank issued sterling mortgage bonds, repayable as to principal in 1957 with interest thereon meanwhile. A term of the bonds provided that questions arising should be settled in accordance with English law. The bonds were guaranteed as to principal and interest unconditionally by another Greek bank. In 1941 payment of interest ceased and no further interest was paid thereafter. In 1949 the Government of Greece declared a moratorium (which continued in force at all material times) on all obligations on the bonds, including any right of action. In 1953 by an Act of the Government of Greece and by royal decree the guarantor bank and a third Greek bank (hitherto unconnected with the bonds) were amalgamated into a new banking company, and it was enacted that the new company was the "universal successor" to the rights and obligations of the amalgamated companies. In 1955 an offer was made by the original debtor bank to English bondholders, to be guaranteed by the new company. The plaintiff, the holder of bearer bonds, did not accept that offer, but brought an action in the High Court against the new company, claiming interest from 1941 to 1955 inclusive, on the ground that the entire assets and liabilities of the guarantor bank, including its liability under the guarantee, had been assigned and transferred to the new company. Sellers, J., awarded the plaintiff six years' interest. The new company appealed, conceding on appeal that the proper law of the bonds was English law.

DENNING, L.J., said that the new amalgamated company raised on the appeal two points: (1) that it could not be sued on the bonds in the English courts because it was not a party to the bonds; and (2) that if it could be sued, it could pray in aid the moratorium law of Greece to avoid the liability. On the first point the concept of universal successor was derived from Roman law and was firmly entrenched in continental systems of law. We had nothing quite like it except the amalgamation of two corporations into one by statute, in which case the new amalgamated corporation succeeded to all the rights and liabilities of the former corporations not only in this country but also in foreign countries, and was in effect the universal successor of them. So also the English courts ought to recognise a universal succession by foreign law. In the present case the English courts would recognise this universal succession by the law of Greece and hold that the new amalgamated company could sue and be sued here as a person who stood in the shoes of the former companies, entitled to all their assets and subject to all their liabilities just as if it had itself contracted them. Just as the status of an individual, his birth, death, marriage, and succession were governed by the law of his domicile, so also the status of a corporation, its creation, its dissolution, its amalgamation and succession were governed by the law of its incorporation. On the second point that if the English courts recognised Greek law so as to make the new company liable as universal successor, the courts should also recognise the moratorium, the rules of private international law did not permit the court to give effect to such an argument. Though the debtor was a Greek debtor the debt was an English debt. The court recognised that Greek law had the power of life and death over the company which it had created, and the English court must accept the substitute which it had provided; but when the substitute stood in our courts to answer for an English debt, it must answer according

to English law, which said that the debt must be paid according to its terms. The defendants were liable and the appeal should be dismissed.

ROMER, L.J., concurring, said that there was no direct authority on the first point under consideration, but on general principles of international comity one would suppose that our courts would accord full recognition to the results, under Greek law, of the amalgamation of 1953, just as we would expect the courts of another civilised country to recognise the effect of an amalgamation of English companies under the Companies Act, 1948. The plaintiff was entitled to succeed, for the Greek decree had created a statutory universal succession of a kind which our courts would recognise, and the liability on which the plaintiff sued was an incident of that succession which was favourable to the English creditors of the former guarantor bank.

PARKER, L.J., also concurring, said on the second point that the application of the foreign law to status did not involve applying the foreign law as to obligations. What had been transferred was the liability under the guarantee, whatever it might from time to time be. If the old guarantor bank was liable to be sued in England, as it was, so could the new bank.

Appeal dismissed. Leave to appeal to the House of Lords granted.

APPEARANCES: *Harold Lever* and *J. H. R. Newey* (*Stibbard, Gibson & Co.*); *John Foster*, Q.C., and *Mark Littman* (*Hardman, Phillips & Mann*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [2 W.L.R. 570

Chancery Division

SPECIAL CONTRIBUTION: NO TIME LIMIT FOR MAKING ASSESSMENT

Beauchamp's Executors *v.* Inland Revenue Commissioners

Wynn Parry, J. 7th February, 1957

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

Sir Frank Beauchamp died on 17th June, 1950, in the year of assessment 1950–1951, and his executors appealed to the Commissioners for the Special Purposes of the Income Tax Acts against an additional assessment to special contribution in the sum of £11,211 made upon them in their representative capacity on 30th April, 1954. The appeal was dismissed by the Commissioners. The executors appealed on the grounds (*a*) that an assessment to special contribution must be made not later than six years after the end of the year of assessment 1947–1948—i.e., not later than 5th April, 1954; (*b*) such assessment must be made on executors not later than the end of the third year next following the year of assessment in which the deceased person died—i.e., on the facts of the present case, again not later than 5th April, 1954.

WYNN PARRY, J., said that in order to arrive at a solution it was necessary to consider certain sections of Pt. V of the Finance Act, 1948. The appellants' first proposition was that on the language of Pt. V a time limit was imposed on the Special Commissioners. The Commissioners had said: "... we accept the Crown's contention that in spite of ... references to the year 1947–1948 the Special Contribution was not a tax imposed for the year of assessment 1947–1948," and he agreed with them. The year 1947–1948 was introduced simply as a basic year on which the necessary calculation was to be made, and in that regard Pt. V differed materially from schemes in the other Acts relating to the levying and payment of tax. Section 65 dealt expressly with relief in respect of error or mistake, and there was in express terms an *ad hoc* provision dealing with relief in respect of error or mistake. By way of contrast, there was no such express provision dealing with the limitation of the period in respect of which an assessment might be made. If the legislature had decided to provide that in respect of this special tax there should be such a limited period within which an assessment could be made, it could have incorporated such a provision in this Part of the Finance Act, 1948. Considering the Special Contribution Regulations, 1948, made under s. 55 (6) of the Act, his lordship came to the conclusion that the Special Commissioners were right that even assuming that the Commissioners of Inland Revenue had power under para. 4 of the regulations to introduce a period of limitation, they had not done so. The appeal, therefore, failed. Appeal dismissed.

APPEARANCES: *Roy Borneman*, Q.C., and *C. N. Beattie* (*Rider, Heaton, Meredith & Mills*, for *Thatcher & Hallam*, Midsomer Norton); *John Senter*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 549

WILL: TRUSTS FOR EDUCATION OF GRANDCHILDREN: DIRECTION TO ACCUMULATE INCOME: DISTRIBUTION ON YOUNGEST GRANDSON ATTAINING TWENTY-ONE: TIME FOR ASCERTAINING CLASS

***In re* Ransome, deceased; Moberly *v.* Ransome**

Upjohn, J. 22nd February, 1957

Adjourned summons.

By cl. 25 of her will dated 20th January, 1930, a testatrix directed her trustees (therein called the "*R* trustees"), in the division of her residuary estate, to allocate her ordinary shares in a company in equal portions as nearly as might be to the four shares into which her residuary estate was to be divided as previously directed. By cl. 27 the testatrix directed that the trustees should invest one of the shares in the residuary estate, which she called the "*W.R.* trust fund," on trust to pay certain annuities and she authorised the trustees to pay out of the income of that fund the college fees of her grandson *W.A.R.*, "so long as he should remain a pupil at '*H* college.'" By cl. 28, subject to the payments provided in cl. 27, she directed the trustees to stand possessed of the *W.R.* trust fund in trust for all or any of the children or child of her son *W*, other than her grandson *R*, who being male should attain the age of twenty-one years or being female attain that age or marry. By a fourth codicil, as slightly amended by a fifth codicil, dated respectively 14th August, 1934, and 12th June, 1935, the testatrix, after reciting that she was desirous of making some provision for the education of the children of her grandson *R*, directed that the trustees should hold one-fifth part of the shares of the company, held by them as part of the *W.R.* trust fund, on trust to pay and apply any dividend declared thereon for or towards the education of the children or child of her grandson *R*, and she further directed as follows: "and I direct that any part of the income not expended as aforesaid shall be accumulated until the youngest child of my grandson shall attain the age of twenty-one years. 3. Upon the youngest child of my said grandson attaining the age of twenty-one years the *R* trustees shall stand possessed of the said one-fifth part of the said shares and the accumulated income therefrom upon trust for such of the children of my said grandson as shall be then living and if more than one in equal shares. 4. Should no child of my said grandson attain the age of twenty-one years my trustees shall hold the said shares and the accumulated income thereof upon the trusts declared in my said will of and concerning the *W.R.* trust fund. 5. In all other respects I confirm my said will as altered by the said first, second and third codicils thereto." The testatrix died on 6th July, 1935. Her grandson *R* had, by his first marriage, a son *D*, who was born in 1930, and a daughter, who died an infant and unmarried. By his second marriage in 1953 there were, at the date of these proceedings, no children. A summons was taken out by the trustees to determine whether on the true construction of the fourth codicil (*a*) the shares of the company and accumulations of income thereof, which by cl. 3 of that codicil were directed, on the youngest child of *R* attaining the age of twenty-one years, to be held on trust "for such of the children of my said grandson as shall then be living and if more than one in equal shares" vested absolutely in the defendant [*D*] on his attaining the age of twenty-one; or (*b*) any future child or children of [*R*], who were living when the youngest of such future children attained the age of twenty-one, would be entitled to participate in such shares and accumulations; or (*c*) how otherwise such shares and accumulations were held.

UPJOHN, J., said that the summons raised a number of interesting points on the effect of a gift contingent on a youngest child attaining twenty-one and on the Thellusson Act, now s. 164 of the Law of Property Act, 1925. In his (his lordship's) view, on the true construction of the fourth codicil, it was the testatrix's intention that all children of *R* whenever born should be educated out of the funds; and that when the youngest

attained twenty-one the fund was to be divided among all *R's* children then living. Accordingly, he rejected the submission that *D* was absolutely and indefeasibly entitled to the whole capital of the fund; nor was he compelled by any artificial rule of construction to hold to the contrary, for in his judgment *Kevern* v. *Williams* (1832), 5 Sim. 171; *Elliott* v. *Elliott* (1841), 12 Sim. 276, and *In re Coppard's Estate* (1887), 35 Ch. D. 350, were wrongly decided. The next question was as to the impact of the rule against accumulations on the directions to accumulate until the youngest child attained twenty-one. Plainly, that direction infringed the rule and it was necessary, accordingly, to determine for what period the term was valid. In his judgment s. 164 (1) (*b*) of the Law of Property Act, 1925, applied in the present case and, therefore, the period of accumulation was a term of twenty-one years from the death of the testatrix. The next question to be determined, and it was a difficult one, was as to the destination of income from the expiry of twenty-one years from the death of the testatrix until it was known when the gift vested. He rejected the submission that *D* was now entitled to be paid the whole income. In his judgment, however, such income was not undisposed of and did not pass as on an intestacy, but must be held on the original trusts declared by the will concerning the *W.R.* trust fund. Declaration accordingly.

APPEARANCES: *E. Blanshard Stamp, Nigel Warren* (*N. Browne-Wilkinson* with him); *W. A. Bagnall, H. E. Francis* (*Warren & Warren* for *Notcutt & Sons*, Ipswich).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 556**

Queen's Bench Division

TOWN AND COUNTRY PLANNING: VALIDITY OF ENFORCEMENT NOTICE

Francis *v.* Yiewsley and West Drayton Urban District Council

McNair, J. 8th March, 1957

Action.

In February, 1949, the owner of land placed on the land caravans for residential purposes and applied to the local planning authority for permission to use the land for that purpose. Permission was refused and the owner appealed to the Minister, who allowed the appeal to the extent of permitting the use of the land as a caravan site for six months from 22nd February, 1950. In 1952 the planning authority served on the owner an enforcement notice stating that "whereas . . . the land . . . was developed by placing thereon caravans for residential purposes and whereas such development . . . was carried out and without the grant of planning permission required under Pt. III of the Town and Country Planning Act, 1947. Now therefore the [local planning authority] in exercise of the powers contained in ss. 23 and 24 of the said Act hereby give you notice to remove all caravans from the site within fifty-five days of the date on which this notice takes effect." The owner claimed a declaration that the enforcement notice was ineffective on the ground that the notice did not specify the development alleged to have been carried out as required by s. 23 (2) of the Act, and because planning permission as required by the Act had been granted.

MCNAIR, J., said that the notice was only required to state whether the development had taken place without permission or in breach of a condition, and if the notice adequately made plain which of those two grounds were relied on and also identified the act which it was alleged constituted the breach, that was sufficient, and the notice did not have to state the reasons why the act specified involved a breach. Accordingly, on the first point the notice could not be attacked. But it was said that this notice was invalid because it recited that development had taken place without planning permission, whereas on the admitted facts permission was granted by the Minister. Once permission had been given, albeit subject to conditions, it could no longer be said that that use carried out under that permission could constitute development without permission under the Act. Accordingly, as this notice, although sufficiently specifying the development complained of as required by s. 23 (2), did not truly state that that development was carried out without the grant of planning permission, the enforcement notice must be declared invalid because it lacked any true factual basis. The defendants submitted that inasmuch as under s. 23 (4) the plaintiff, when served with this notice, had a right to appeal to a court of summary jurisdiction, and had an opportunity before that court of alleging that permission had been granted, he in fact did not do so, with the result, it was said, that the matter then fell to be dealt with under s. 24 (3) of the Act by way of prosecution by the local authority for unauthorised use. On such a prosecution it would not have been open to the plaintiff to take the point now taken and, it was said, that being the remedy provided for by the statute, this court in the exercise of a discretionary remedy by way of declaration could not assist the plaintiff. But where, as in s. 24 (1), there was the very precise exclusion of the subject's ordinary rights, it was limited to the one case where the local authority were suing to recover the cost of steps taken pursuant to one form of enforcement notice. In s. 24 (3) there was no such provision and there was no reason why one should read into that section that if the owner did not exercise a right of appeal under s. 23 (4) within the twenty-eight days he was thereby precluded from raising in any court the points against the enforcement notice. Therefore, inasmuch as the enforcement notice was based on a fundamentally false basis of fact, the notice was invalid. Judgment for the plaintiff.

APPEARANCES: *Douglas Frank* (*Speechly, Mumford & Craig*, for *Woodbridge & Sons*, Uxbridge); *J. P. Widgery* (*Sharpe, Pritchard & Co.*, for *A. Boote*, West Drayton).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 627**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: PRACTICE: JUDGMENT SUMMONS: MAINTENANCE TO TWO CHILDREN: ONE SUMMONS ISSUED BY WIFE AS NEXT FRIEND OF BOTH: SEPARATE SUMMONSES REQUIRED

Easterbrook *v.* Easterbrook

Collingwood, J. 18th March, 1957

Judgment summons.

A judgment summons was issued on 15th February, 1957, in respect of arrears of maintenance for two children of a marriage which had been dissolved. The debt arose by virtue of an order dated 9th March, 1955, directing the husband to pay, *inter alia*, maintenance to the two children at the rate of 30s. a week each. No payments had been made under the order and the judgment summons was issued by the wife as the next friend of the two children. At the hearing the question was raised whether the proceedings had been properly commenced by the issue of one summons covering the total amount of the debt due to both children.

COLLINGWOOD, J., said that reference had been made to the record of the proceedings in *Shelley* v. *Shelley* (*No. 2*) [1952] P. 111 which showed that there were, in fact, two summonses on the file in that case. The fundamental point was that there were two individual debts, one due to each of the two children. They could not be the subject of the same judgment summons simply because the two children appeared by the same next friend. Separate summonses must be issued in respect of what was due to each child. Summons dismissed.

APPEARANCES: *William Kee* (*Edward Fail & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 635**

Mr. GEOFFREY MARTEN KING, solicitor, of Stourbridge, has been elected president of the Birmingham Law Society.

Mr. JOHN LEWIS WILLIAMS has been appointed Official Receiver for the Bankruptcy Districts of the County Courts of Bradford, Halifax, Huddersfield and Dewsbury, and for Leeds, Harrogate, Scarborough, Wakefield and York, in succession to Mr. W. H. Meredith.

Mr. EDMUND PICKLES, solicitor, of Wrexham, has been appointed coroner for East Denbighshire.

The Board of Inland Revenue have appointed Mr. E. G. TUCKER Controller of Death Duties from 1st April, in succession to Sir Arthur T. Evans, who is retiring from the public service. Mr. H. T. VEALL has been appointed a deputy Controller of Death Duties in succession to Mr. Tucker.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Finsbury Square Bill [H.L.] [28th March.

Read Second Time :—

Esso Petroleum Company Bill [H.L.] [26th March.
White Fish and Herring Industries (No. 2) Bill [H.C.] [28th March.

Read Third Time :—

Customs Duties (Dumping and Subsidies) Bill [H.C.] [28th March.
Magistrates' Courts Bill [H.L.] [28th March.

In Committee :—

House of Commons Disqualification Bill [H.C.] [28th March.
Public Health Officers (Deputies) Bill [H.C.] [28th March.
Shops Bill [H.L.] [26th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Agriculture Bill [H.C.] [25th March.
Liverpool Hydraulic Power Bill [H.L.] [25th March.
Obscene Publications Bill [H.C.] [29th March.
Registration of Births, Deaths and Marriages (Navy, Marines and Service Civilians) (Overseas) Bill [H.C.] [29th March.
Wakefield Corporation Bill [H.L.] [25th March.

Read Third Time :—

Rent Bill [H.C.] [28th March.

B. QUESTIONS

STAMP OFFICE (ADJUDICATION SECTION)

Mr. THORNEYCROFT said that the time taken to assess the stamp duty on documents submitted to the adjudication section of the Stamp Office depended primarily on the nature of the document. Within the last year some cases had been stamped and returned within two days of lodgment. Others involving difficult questions of law or valuation inevitably led to correspondence and argument lasting many months. There were arrangements for giving priority of attention to urgent cases. The staff engaged on assessment of stamp duty in the adjudication section numbered twenty-five ; five had left during the past twelve months and there had been one case of abnormal sick leave. New staff were trained on the work of the section by their seniors and more experienced colleagues. [26th March.

RESTRICTIVE TRADE PRACTICES (REGISTRATIONS)

Sir DAVID ECCLES stated that about 1,200 agreements for registration under the Restrictive Trade Practices Act, s. 10, had been sent to the Registrar by the end of the first registration period on 28th February. [28th March.

STATUTORY INSTRUMENTS

Approved Schools (Contributions by Education Authorities) (Scotland) Regulations, 1957. (S.I. 1957 No. 420 (S. 22).) 5d.
Brighton Corporation Water Order, 1957. (S.I. 1957 No. 466.) 5d.
Central London (Waiting and Loading) (Restriction) Regulations, 1957. (S.I. 1957 No. 479.) 10d.
City of Gloucester (Extension) Order, 1957. (S.I. 1957 No. 463.) 9d.
City of London (Waiting and Loading) (Restriction) Regulations, 1957. (S.I. 1957 No. 480.) 6d.
City of Oxford (Extension) Order, 1957. (S.I. 1957 No. 462.) 9d.
Double Taxation Relief (Estate Duty) (Switzerland) Order, 1957. (S.I. 1957 No. 426.) 6d.
Double Taxation Relief (Taxes on Income) (Netherlands Antilles) Order, 1957. (S.I. 1957 No. 425.) 5d.
Importation of Horses, Asses and Mules Order, 1957. (S.I. 1957 No. 467.) 7d.
Importation of Raw Vegetables (Scotland) Order, 1957. (S.I. 1957 No. 436 (S. 24).) 5d.
Import Duties (Drawback) (No. 5) Order, 1957. (S.I. 1957 No. 442.)
Import Duties (Exemptions) (No. 2) Order, 1957. (S.I. 1957 No. 441.)
Local Government (Allowances to Members) (Prescribed Bodies) Regulations, 1957. (S.I. 1957 No. 489.)
London Traffic (Prescribed Routes) (Croydon and Coulsdon and Purley) Regulations, 1957. (S.I. 1957 No. 478.) 5d.
London Traffic (Unilateral Waiting) (Amendment) (No. 3) Regulations, 1957. (S.I. 1957 No. 482.) 5d.
London Traffic (Unilateral Waiting) (Amendment) (No. 4) Regulations, 1957. (S.I. 1957 No. 483.) 5d.
London Traffic (Unilateral Waiting) (Amendment) (No. 5) Regulations, 1957. (S.I. 1957 No. 484.) 6d.
Mid-Glamorgan Water Order, 1957. (S.I. 1957 No. 464.)
Mid-Wessex Water Order, 1957. (S.I. 1957 No. 490.) 5d.
Outer London (Waiting and Loading) (Restriction) Regulations, 1957. (S.I. 1957 No. 481.) 1s.
Poisons Rules, 1957. (S.I. 1957 No. 468.) 5d.
Pontypridd and Rhondda Water Order, 1957. (S.I. 1957 No. 449.) 5d.
Private Legislation Procedure (Scotland) General Order, 1957. (S.I. 1957 No. 465 (S. 25).) 5d.
Prohibition of Landing of Animals, Carcases and Animal Products, and Hay and Straw from the Channel Islands Order, 1957. (S.I. 1957 No. 487.) 5d.
Public Trustee (Fees) Order, 1957. (S.I. 1957 No. 485.) 7d.
Stopping up of Highways (Cheshire) (No. 3) Order, 1957. (S.I. 1957 No. 476.) 5d.
Stopping up of Highways (Derbyshire) (No. 6) Order, 1957. (S.I. 1957 No. 445.) 5d.
Stopping up of Highways (Hertfordshire) (No. 3) Order, 1957. (S.I. 1957 No. 458.) 5d.
Stopping up of Highways (Lancashire) (No. 7) Order, 1957. (S.I. 1957 No. 456.) 5d.
Stopping up of Highways (Lancashire) (No. 8) Order, 1957. (S.I. 1957 No. 457.) 5d.
Stopping up of Highways (Leicestershire) (No. 5) Order, 1957. (S.I. 1957 No. 454.) 5d.
Stopping up of Highways (Lincolnshire–Parts of Lindsey) (No. 2) Order, 1957. (S.I. 1957 No. 455.) 5d.
Stopping up of Highways (Merionethshire) (No. 1) Order, 1957. (S.I. 1957 No. 446.) 5d.
Stopping up of Highways (Nottinghamshire) (No. 4) Order, 1957. (S.I. 1957 No. 470.) 5d.
Stopping up of Highways (Nottinghamshire) (No. 5) Order, 1957. (S.I. 1957 No. 447.) 5d.
Stopping up of Highways (Somerset) (No. 2) Order, 1957. (S.I. 1957 No. 477.) 5d.
Stopping up of Highways (Worcestershire) (No. 1) Order, 1957. (S.I. 1957 No. 469.) 5d.
Town and Country Planning (County of Westmorland) Development Order, 1957. (S.I. 1957 No. 472.) 6d.
Wages Regulation (Rope, Twine and Net) (Amendment) Order, 1957. (S.I. 1957 No. 473.) 6d.
Watford and South of St. Albans–Redbourn–Kidney Wood, Luton, Special Road Scheme, 1957. (S.I. 1957 No. 448.) 5d.
West Riding of Yorkshire and City of York (Boundaries) Order, 1957. (S.I. 1957 No. 444.) 10d.
Witnesses' Allowances (London) Regulations, 1957. (S.I. 1957 No. 440 (L. 3).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

"THE SOLICITORS' JOURNAL," 4th APRIL, 1857

On the 4th April, 1857, The Solicitors' Journal quoted with approval an extract from " Letters to John Bull, Esq.," by Joshua Williams : " Are there too many low attorneys ? Then try to elevate this branch of the profession rather than to decry and depress it. It is painful to see men who have risen to eminence and wealth on the shoulders of solicitors, trying all they can to cut down their fees and lessen their importance. Complaints are sometimes made that attorneys and solicitors do not attend the courts themselves, but send mere clerks . . . And what wonder when the fee allowed will pay a clerk, but will not pay his principal ? . . . Of late years a strict examination has been instituted, to which all must submit who would be admitted attorneys . . . I believe that this examination has tended greatly to elevate attorneys and solicitors as a class. They have their social status very much in their own keeping. I have tried hard to persuade some of my friends in this branch of the profession to give their sons, whom they intend to succeed them, the inestimable benefit of a university education . . . If both branches of the profession were equally educated, there is no earthly reason why the social status of a solicitor should not be fully equal to that of a barrister. In Scotland a writer to the signet is in the same social position as an advocate and why should it not be so here ? The duties of an attorney or solicitor require quite as many of the qualities by which human nature is adorned as the duties of a barrister. In some respects . . . there is greater scope for noble qualities in the profession of a solicitor . . .

NOTES AND NEWS

Personal Notes

Mr. John Frederick Finch Miller, solicitor, of Lowestoft, was married at Ipswich on 23rd March to Miss Mary Jean Wilton, of Lowestoft.

Mr. Thomas Oldroyd, town clerk of Nuneaton, has been presented with a cut glass set by members of the Nuneaton Town Council, to mark his retirement from that post on completing twenty-five years' service.

Miscellaneous

DEVELOPMENT PLANS

Durham County Development Plan

Town Map No. 3 (*Billingham*)

Proposals for alterations or additions to the above development plan were on 20th March, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Urban District of Billingham. Certified copies of the proposals as submitted have been deposited for public inspection at the County Planning Office, 10 Church Street, Durham, and also at the Billingham U.D.C. Offices, Haverton Hill, Billingham. The copies of the proposals so deposited together with copies of the plan are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 7th May, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the office of the Clerk of the Council, Shire Hall, Durham, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

West Hartlepool County Borough Council Development Plan

Proposals for alterations or additions to the above development plan were, on 18th March, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the county borough of West Hartlepool. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Clerk's Office, Municipal Buildings, West Hartlepool. The copy of the proposals so deposited, together with a copy of the plan, are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 12.30 p.m., and 2.30 p.m. and 5 p.m. on Mondays to Fridays, and between the hours of 10 a.m. and 11.30 a.m. on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 4th May, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Hartlepool County Borough Council, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

County Borough of Wolverhampton Development Plan

On 15th March, 1957, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Town Hall, Wolverhampton. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9.30 a.m. to 12.30 p.m. and 2.30 p.m. to 5 p.m. on Monday to Friday, and 9.30 a.m. to 12 noon on Saturday. The plan became operative as from 22nd March, 1957, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 22nd March, 1957, make application to the High Court.

DOUBLE TAXATION

Netherlands Antilles : An Order in Council relating to the extension to the Netherlands Antilles of the Double Taxation Convention with the Netherlands was made on 15th March and has now been published as S.I. 1957 No. 425. Switzerland : The Convention with Switzerland for the avoidance of double taxation with respect to duties on the estates of deceased persons has now been ratified and has been published as the Schedule to an Order in Council numbered S.I. 1957 No. 426. The Convention has effect in the case of estates of persons dying on or after 25th February, 1957, the date on which instruments of ratification were exchanged.

The combined annual general meeting of members of the area committee and of members of all local committees within the No. 5 (South Wales) Legal Aid Area, will be held at the Park Hotel, Cardiff, on Saturday, 4th May, 1957, at 12 noon.

THE LAW SOCIETY

The President of The Law Society, Sir Edwin Herbert, gave a luncheon party on 1st April at 60 Carey Street, Lincoln's Inn. The guests were : Lord Citrine, Sir Norman Brook, Mr. Henry Willink, Q.C., Sir Kenneth Lee, Mr. H. C. Drayton, Mr. Eric Davies, Mr. G. F. Pitt-Lewis and Mr. Thomas G. Lund.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at p. 68, *ante* :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Cardiganshire County Council	Aberystwyth Borough; Aberystwyth Rural District	15th January, 1957	31st May, 1957
Cornwall County Council	Bude-Stratton, St. Just Urban Districts: modifications to draft maps and statements of 19th September, 1953, and 17th May, 1956	29th January, 1957	8th March, 1957
	West Penwith Rural District: modifications to draft map and statement of 19th September, 1953	30th January, 1957	8th March, 1957
East Suffolk County Council	Blyth, Deben, Gipping Rural Districts: further modifications to draft maps and statements of 22nd April, 1953, 26th January, 1954, and 30th December, 1955	15th February, 1957	12th April, 1957
Monmouthshire County Council	Trelleck Parish: modifications to draft maps and statements of 16th December, 1952, and 13th January, 1953	22nd January, 1957	27th February, 1957
Norfolk County Council	Freebridge Lynn Rural District	21st January, 1957	21st May, 1957
	Walsingham Rural District: modifications to draft map and statement of 28th June, 1955	21st January, 1957	18th February, 1957
Salop County Council	Drayton, Shifnal, Wen Rural Districts; Whitchurch Urban District: modifications to draft map and statement of 24th December, 1954	7th February, 1957	14th March, 1957
Somerset County Council	Dulverton Rural District: modification to draft map and statement of 5th February, 1954	5th February, 1957	8th March, 1957
	Bathavon, Clutton Rural Districts; Keynsham, Norton Radstock Urban Districts	1st March, 1957	3rd August, 1957

Provisional Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Anglesey County Council	Area of the council	25th February, 1957	24th March, 1957
Cornwall County Council	Bodmin, Penzance Boroughs	29th January, 1957	9th March, 1957
Devon County Council	Crediton Urban and Rural Districts	1st March, 1957	29th March, 1957
East Suffolk County Council	Beccles Borough; Bungay Urban District; Wainford Rural District	15th February, 1957	15th March, 1957
East Sussex County Council	Uckfield Rural District	6th March, 1957	2nd April, 1957
Oxfordshire County Council	Administrative County of Oxford	16th February, 1957	22nd March, 1957
Wiltshire County Council	Devizes Borough and Rural District; Mere and Tisbury Rural District	8th January, 1957	4th February, 1957
Worcestershire County Council	Kidderminster Borough	8th March, 1957	4th April, 1957

Definitive Map and Statement

Surveying Authority	District covered	Date of notice	Last date for applications to the High Court
East Sussex County Council	Hove Borough	20th February, 1957	2nd April, 1957

Wills and Bequests

Mr. Francis Harold Braund, retired solicitor, of Worthing, left £46,446 (£46,332 net).

Mr. James Yates Holt, solicitor, of Bromsgrove, left £45,836 (£45,636 net).

Mr. Ernest Vintner, M.A., LL.M., solicitor, of Cambridge, left £54,816 (£53,442 net).

OBITUARY

Mr. F. T. EDGE

Mr. Frank Travers Edge, solicitor, of Birmingham, died on 14th March at Sutton Coldfield, aged 79. He was admitted in 1902.

Mr. E. M. GIBSON

Mr. Edward Morris Gibson, solicitor, of Sutton, died on 12th March, aged 87. He was clerk to Sutton magistrates for twenty-four years and was a former chairman of Sutton and Cheam Urban Council. He was admitted in 1891.

Mr. I. I. GOLDSTEIN

Mr. Irvin Isaac Goldstein, solicitor, of Manchester Square, London, W.C.1, died recently in Sicily, aged 33. He was admitted in 1950.

Mr. A. G. HEMSLEY

Mr. A. Guy Hemsley, O.B.E., retired solicitor, of St. James's Place, London, S.W.1, died on 24th March, at Rock, Cornwall.

Mr. E. HUTCHINGS

Mr. Ernest Hutchings, solicitor, of Torquay, and Coroner for South Devon, died on 24th March, aged 83. He was admitted in 1899.

Mr. W. F. McKEER

Mr. William Francis McKeer, late deputy town clerk of St. Pancras, died on 29th March, aged 67.

Mr. D. S. MILWARD

Mr. Douglas Sutherland Milward, M.B.E., solicitor, of Dursley, Glos., died on 25th March. He was admitted in 1925.

Mr. C. F. MONK

Mr. Charles Frederick Monk, solicitor, of Birmingham, died recently, aged 73. A former Lord Mayor of Birmingham, he was admitted in 1906.

Mr. C. J. REEVES

Mr. Charles James Reeves, retired clerk to Messrs. Woodbridge and Sons, of Uxbridge, died on 4th March, aged 76. He was for some years Clerk to the Justices at Uxbridge Court.

Mr. J. F. B. SATCHELL

Mr. John Frederick Bridge Satchell, solicitor, of New Bond Street, London, W.1, died on 7th March, aged 47. He was admitted in 1932.

Mr. R. J. THOMAS

Mr. Richard Jenkin Thomas, retired solicitor, of Neath, died at Swansea on 13th March, aged 91. At one time president of the Neath and Port Talbot Law Society, he was admitted in 1888.

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